

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1047 OF 2009

VELU @ VELMURUGAN & ORS.

... APPELLANTS

VERSUS

**STATE THROUGH INSPECTOR
OF POLICE**

...RESPONDENT

ORDER

1. This appeal, by special leave has been preferred by the appellants against their conviction and sentence.

2. Altogether six persons were put on trial and in the present appeal we are concerned with the four appellants who were Accused Nos. 1, 2, 4 and 5. Appellant No. 1, Velu @ Velmurugan has been found guilty under Sections 302 and 324 of the Indian Penal Code and sentenced to undergo imprisonment for life and two years respectively, while other appellants have been held guilty under Section 324 of the Indian Penal Code and sentenced to undergo rigorous

imprisonment for two years.

3. Prosecution commenced on the basis of the report given by PW-1, Subramani before the Sub-Inspector of Police on 6th of March, 2002 at 1.00 A.M. at JIPMER Hospital, Pondicherry. According to the informant, three acres of land situated in his village was leased out to his family by its owner Ranga Iyer 40 years ago and since then they were cultivating the same. In the year 1985, according to the prosecution, Balasundaram (since acquitted) who happens to be the father of Appellant No. 1, Velu purchased the aforesaid land from Ranga Iyer and asked the informant and his family members to vacate the same but they did not accede to his request. Instead they filed civil suit claiming right over the land which is pending adjudication before the court. Prosecution case further is that informant's elder brother Narayanswami was done to death by men of Balasundaram in the year 1993 due to the aforesaid dispute. It is the case of the prosecution that on 5th of March, 2002, the informant came from Chennai where he was working as a Junior Assistant in Survey Department to his village. There Appellant No. 1, Velu met him and asked him to see that his brother Ramachandran

vacate the land failing which he will meet the same fate as that of his brother Narayanswami. Thereafter, according to the prosecution, the informant returned to his home, took food and left for Chennai along with his brother Ramachandran and when reached village Kandamanadi, opposite Sudhakar Engineering Workshop, Appellants Velu, Magesh, Ramakrishnan and Subramani along with another accused (since acquitted) came in a group armed with knives and *casurina* sticks. It has been alleged that Appellant No. 1, Velu gave knife blow on the head of Ramachandran whereas Appellant No. 4, Subramani caused injury on his left hand. It was protested by the informant, whereupon Appellant No. 1, Velu caused injury on his ankle and knee and appellant Ramakrishnan beat him with the stick on his left shoulder and right knee. Appellant Subramani is alleged to have given a stick blow on the informant's right arm. After assaulting Ramachandran and the informant the accused persons fled away from the place of occurrence. Injured were taken to the Villupuram Government Hospital where after initial treatment, they were referred to JIPMER Hospital, Pondicherry for further treatment but Ramachandran died on way to the hospital and was pronounced dead by the doctors

at the JIPMER Hospital.

4. On the basis of the aforesaid information, case under Sections 147, 148, 323, 324 and 302 was registered against the appellants and other two accused persons (since acquitted). After usual investigation police submitted charge-sheet and ultimately the appellants along with two other accused persons were committed to the Court of Sessions to face trial. Appellants denied to have committed any offence and claimed to be tried. In order to bring home the charge the prosecution examined altogether 21 witnesses besides a large number of documents were exhibited.

5. The trial court relying on the evidence of PW-1, Subramani, and the dying declaration of the deceased Ramachandran recorded by PW-19, Dr. Balasubramaniyan held that the prosecution has been able to prove its case beyond all reasonable doubt against the appellants and the accused Mahalingam but acquitted Balasundram of all the charges leveled against him. On appeal the High Court set aside the conviction of Mahalingam and maintained the conviction of Appellant No. 1, Velu under Sections 302 and 324 of the Indian Penal Code but set aside the conviction of

Appellant Nos. 3 and 4 under Section 302 of the Indian Penal Code and that of Appellant No. 4 under Section 302/149 of the Indian Penal Code but convicted them under Section 324 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for two years. That is how the appellants are before us.

6. Mr. R. Balasubramanian, Senior Advocate appearing on behalf of the appellants submits that there is inordinate delay in lodging the first information report and in view of the admitted animosity between the parties, false implication of the appellants cannot be ruled out. He points out that according to the prosecution the occurrence had taken place at 5.30 P.M. on 5th of March, 2002 whereas the report which led to the registration of the first information report was given between 1200 hrs. to 1300 hrs in the night of 5th/6th of March, 2002. This delay, according to the Senior Counsel, itself is sufficient to reject the case of the prosecution. It has been pointed out that PW-1, Subramani and the deceased Ramachandran while being taken to the hospital had crossed various police stations but they did not give any report of the incident.

We do not find any substance in the submission of the learned Senior Counsel. The occurrence has taken place at about 5.30 P.M. on 5th of March, 2002 in which PW-1, Subramani and the deceased Ramachandran sustained serious injuries. They were taken to the Government Hospital at Villupuram where they were examined by PW-19, Dr. Balasubramanian at 5.50 P.M. and 5.55 P.M. and after giving initial treatment they were referred to JIPMER Hospital at Pondicherry. In a situation like this when PW-1 had sustained nine injuries and the deceased Ramachandran had sustained multiple injuries, the normal conduct of human being would be to save their lives and rush them to the hospital and in that state of mind it is not expected that they would first make an effort to lodge report to the police. It is worth mentioning here that when Sub-Inspector of Police came to know about the incident, he first went to the Villupuram Government Hospital and thereafter to JIPMER Hospital at Pondicherry and it is in the hospital that PW-1, Subramani given report to the police. Therefore, in our opinion, the delay in lodging the first information in no way affects the credibility of the case of the prosecution.

Mr. Balasubramanian, then contends that in view of the admitted animosity between the parties, the conviction of the appellants on the basis of the solitary eye-witness PW-1, Subramani is not fit to be sustained. He submits that the evidence of PW-1, Subramani is not in conformity with the dying declaration of the deceased Ramachandran recorded by PW-19, Dr. Balasubramanian. According to him, to sustain conviction on the basis of a solitary eye-witness, said witness has to be wholly reliable. We do not find any substance in this submission of Mr. Balasubramanian also. PW-1, Subramani is an eye-witness to the occurrence and he has given in detail the role played by each of the appellants. PW-19, Dr. Balasubramanian who had examined him immediately after the occurrence at 5.55 P.M. at Government Hospital, Villupuram had found nine injuries on his person. Therefore, his presence at the time of occurrence cannot be ruled out. He has supported the case of the prosecution in all material particulars. PW-19, Dr. Balasubramanian has clearly stated in his evidence that while he examined the deceased Ramachandran at 5.55 P.M. in the hospital, he disclosed to him that five known persons which included Appellant Nos. 1

to 3, took part in the occurrence and caused injury. We are of the opinion that the evidence of PW-1, Subramani is wholly reliable. Further evidence of PW-19, Dr. Subramanian, who recorded the dying declaration of the deceased Ramachandran also lends support to the case of the prosecution. We are of the opinion that the High Court committed no error in relying on the evidence of PW-1, Subramani and PW-19, Dr. Subramanian to sustain the conviction of the appellants.

It is worth mentioning here that after we had pronounced the judgment Ms. Swarupa Reddy, Advocate informed us that acquitted accused in this case Balasundram who happens to be the father of Appellant No. 1, Velu, wants to address us. We permitted him to do so and while making submission he handed over written submission making request for a CBI inquiry to bring out the truth. The submission made has no bearing in the facts of the present case.

7. In the result, we do not find any merit in the appeal and it is dismissed accordingly.

.....J.
(HARJIT SINGH BEDI)

**NEW DELHI,
APRIL 27, 2011.**

.....**J.**
(CHANDRAMAULI KR. PRASAD)

